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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL SCHIDLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A04-0609-PC-485
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas A. Busch, Judge
Cause No. 79D02-0506-FA-14

January 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Michael Schidler appeals the 120-year sentence that was imposed following his convictions on four counts of Child Molesting,[1] a class A felony, and one count of Possession of Methamphetamine,[2] a class D felony. Specifically, Schidler argues that the imposition of consecutive sentences on all four counts of child molesting cannot stand because the trial court did not give sufficient weight to Schidler's guilty plea and failed to acknowledge his employment history as a mitigating factor. Schidler also maintains that the sentence was inappropriate in light of the nature of the offenses and his character.

Concluding that the factors relied upon by the trial court did not justify the imposition of a 120-year sentence in light of the nature of the offense and Schidler's character, we remand this cause to the trial court with instructions to issue an amended sentencing order, and all other necessary documentation, to reflect a sentence of thirty years each as to counts I and XI for class A felony child molesting to be served consecutively, with all remaining counts to run concurrently, yielding a total executed sentence of sixty years.

FACTS

On June 28, 2005, Schidler was charged with nineteen counts of child molesting, a class A felony, two counts of child molesting, a class C felony, one count of possession of methamphetamine within 1000 feet of a school, a class B felony, one count of possession of marijuana, a class A misdemeanor, and one count of possession of paraphernalia, a class A

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[1] Ind. Code § 35-42-4-3.

[2] Ind. Code § 35-48-4-6.

misdemeanor. The State alleged that Schidler molested his two minor step-daughters, ten-year-old S.E., and seven-year-old A.E. "[o]n or about 2004 to 2005." Appellant's App. p. 6-27. The class A felony child molesting offenses involving S.E. included counts I-VIII and counts XVI-XX, whereas the offenses committed against A.E. were alleged in counts X - XVI. The State further alleged that Schidler committed the drug offenses "[o]n or about June 22, 2005." Id. at 27-29.

On March 7, 2006, Schidler appeared for trial. After the jury was sworn, and just prior to the presentation of evidence, Schidler agreed to plead guilty to the four counts of class A felony child molesting alleged in counts I, VI, XI and XVI and to possession of methamphetamine as a class D felony in exchange for the State's dismissal of the remaining charges. The State and Schidler agreed that sentencing would be left to the trial court's discretion.

At the sentencing hearing on April 21, 2006, the trial court determined that Schidler should serve an aggregate 120-year executed sentence. Specifically, Schidler was sentenced to thirty-year consecutive sentences on each of the four child molesting counts, and to one and one-half years on the possession of methamphetamine charge, with the molestation and methamphetamine sentences to run concurrently. In support of the sentence, the trial court identified the following aggravating circumstances: (1) Schidler violated the victims' trust; (2) the nature and circumstances of the offense; and (3) an imposition of less than the

presumptive sentence would diminish the seriousness of the offenses.[3]

The trial court commented that the circumstances of the crimes were especially heinous because Schidler molested two children over a lengthy period of time within the context of an ostensibly loving relationship. The trial court then identified Schidler's lack of criminal history and his decision to plead guilty as mitigating factors. The trial court afforded little mitigating weight to the guilty plea because the jury had been sworn and the children had already been subjected to testifying about the crimes prior to trial. Schidler now appeals.

DISCUSSION AND DECISION

I. Mitigating Factors

Schidler first claims that his sentence must be set aside because the trial court did not give substantial mitigating weight to his decision to plead guilty and his employment history. In essence, Schidler maintains that the imposition of consecutive sentences was erroneous because the trial court did not properly balance the relevant aggravating and mitigating circumstances.

Sentencing decisions are within the sound discretion of the trial court. Jones v. State, 790 N.E.2d 536, 539 (Ind. Ct. App. 2003). Those decisions are given great deference on appeal and will only be reversed for an abuse of discretion. Beck v. State, 790 N.E.2d 520,

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[3] At first blush, it is apparent that constitutional considerations might have constrained the trial court's reliance on the aggravating factors that it identified in accordance with the limitations advanced in Blakely v. Washington, 542 U.S. 296 (2004). However, Blakely concerns are not implicated when consecutive sentences are imposed. See Smylie, 823 N.E.2d at 686 (holding that even if an aggravator is not found

522 (Ind. Ct. App. 2003). We further note that when the trial court exercises its discretionary authority under Indiana Code section 35-50-1-2 to impose consecutive sentences upon crimes committed prior to April 25, 2005, the trial court must enter, on the record, a statement that: (1) identifies all of the significant mitigating and aggravating circumstances; (2) states the specific reason why each circumstance is considered to be mitigating or aggravating; and (3) shows the court evaluated and balanced the mitigating circumstances against the aggravating circumstances in order to determine whether the aggravators offset the mitigating factors. Diaz v. State, 839 N.E.2d 1277, 1279 (Ind. Ct. App. 2005). A single aggravating circumstance may support the imposition of consecutive sentences. Jones. v. State, 807 N.E.2d 58, 69 (Ind. Ct. App. 2004), trans. denied.

While a sentencing court should consider all evidence of mitigating factors presented by a defendant, the finding of mitigating circumstances rests within the trial court's sound discretion. Creekmore v. State, 853 N.E.2d 523, 530 (Ind. Ct.App. 2006). The trial court need not consider, and we will not remand for reconsideration of, alleged mitigating circumstances that are highly disputable in nature, weight, or significance. Id. Moreover, a sentencing court need not agree with the defendant's assessment as to the weight or value to be given to proffered mitigating facts. Id. Neither is the trial court obligated to explain why it did not find a factor to be significantly mitigating. Id. Finally, guilty pleas are not automatically significant mitigating factors. Gray v. State, 790 N.E.2d 174, 178 (Ind. Ct.

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beyond a reasonable doubt, and thus is incapable of supporting an enhanced sentence, the aggravator may still be used to impose consecutive sentences).

App. 2003). Indeed, a guilty plea need not be afforded significant mitigation where the defendant has already received a substantial benefit from the plea. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999).

In this case, the record demonstrates that Schidler received a substantial benefit as the result of his decision to plead guilty. In exchange for Schidler's guilty plea, the State dismissed seventeen counts of child molesting, the marijuana and paraphernalia charges, and reduced the methamphetamine charge to a class D felony that was originally charged as a class B felony. Tr. p. 8. Hence, the dismissal of the remaining charges substantially shortened the length of Schidler's potential sentences. Furthermore, the State only received a minimal benefit as a result of Schidler's plea because the jury had already been sworn and the child victims had already been subjected to pretrial testimony. Tr. p. 40. In light of these circumstances, we cannot say that the trial court erred in refusing to afford Schidler's decision to plead guilty substantial mitigating weight.

Additionally, although Schidler complains that his sentence must be set aside because the trial court did not consider his employment history a significant mitigating factor, he failed to present that argument at the sentencing hearing. Thus, the issue is waived. See Bryant v. State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004), trans. denied (holding that the failure to proffer a mitigating circumstance at the sentencing hearing results in a waiver of the issue for appellate review). Given these circumstances, we cannot say that the trial court abused its discretion by refusing to give significant weight to Schidler's proffered mitigators.

Finally, the record demonstrates that the trial court identified a number of aggravating circumstances that it used in deciding to impose consecutive sentences. Schidler's lack of criminal history was then identified as the sole mitigating factor. Tr. p. 41. The trial court then balanced those factors and determined that "the aggravating circumstances more than outweigh the mitigating circumstances." Id. Again, while we note that even one valid aggravating circumstance can be sufficient to impose consecutive sentences, we must conclude, as discussed below, that the 120-year aggregate sentence that the trial court imposed upon Schidler was inappropriate in light of the nature of the offense and his character.

II. Inappropriate Sentence

Schidler argues that his sentence was inappropriate in light of the nature of the offenses and his character. In particular, Schidler asserts that the 120-year sentence was inappropriate because "[he] is a young man who had never been in the criminal justice system before and who had consistently maintained employment for all of his adult life," and ultimately admitted his guilt and expressed remorse for his crimes. Appellant's Br. p. 5.

As our Supreme Court observed in Duncan v. State, No. 79S05-0611-CR-451, slip op. at 8 (Ind. Nov. 21, 2006):

> The Indiana Constitution gives this Court "in all appeals of criminal cases, the power to review all questions of law and to review and revise the sentence imposed." Ind. Const. Art. VII, § 4. We currently exercise this power under the standard set forth in Indiana Appellate Rule 7(B): "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

Additionally, we note that although our review of sentences must give due consideration to the trial court's sentencing determination because of its special expertise in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied. Buggs v. State, 844 N.E.2d 195, 204 (Ind. Ct. App. 2006), trans. denied.

As to the nature of the offenses, the record shows that Schidler pleaded guilty to four distinct sexual acts that involved his two young stepdaughters. Tr. p. 17-21. However, he admitted to fondling, engaging in sexual intercourse, and having oral sex with one of the girls on at least four occasions. Appellant's App. p. 31. Schidler also admitted to having oral sex with the other stepdaughter on ten to twenty occasions and penetrating her vagina with his fingers. Id. at 31. Schidler also acknowledged that he "[had abused the children] for a year and a half almost every day." Tr. p. 29. The number and age of the victims, the lengthy period of time over which Schidler committed the acts, his violation of his position of trust, and his drug abuse, certainly support the imposition of consecutive sentences.

By the same token, Schidler had no prior criminal history. In our view, while Schidler's conduct was certainly vile and despicable, we cannot say that the imposition of a 120-year aggregate sentence was warranted in these circumstances. More specifically, because Schidler was convicted and sentenced for committing the acts of class A felony child molesting against each of the two victims, we cannot agree that the imposition of consecutive sentences on each of the four counts was appropriate in these circumstances. Accordingly, we conclude that the appropriate sentence for Schidler is the presumptive thirty-year term on

each count, with the sentences as to counts I and XI to run consecutively and the remaining sentences to run concurrently for a total executed term of sixty years. As a result, we remand this cause to the trial court with instructions to issue an amended sentencing order and all other necessary documentation, to reflect a sentence of thirty years each as to counts I and XI to be served consecutively, with all remaining counts to run concurrently, yielding a total executed sentence of sixty years.

Remanded with instructions.

DARDEN, J., and ROBB, J., concur.